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BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075				HWU, DAVIS D
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/941,377

Filing Date: August 28, 2001

Appellant(s): ABBAS ET AL.

John R. Buser
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 07, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-6, 11-14, and 16-20 stand or fall together with respect to rejections under issue 1, rejection of claims 7-10 stand or fall together with respect to issue 2, and claims 15 and 21-25 stand or fall together with respect to issue 3 because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) ClaimsAppealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

3,705,669	Cox et al.	12-1972
4,788,787	Konietzki	12-1988
4,771,563	Easley	09-1988

(10) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims.

Claim Rejections - 35 USC § 103

Claim 1-6, 11-14, and 16-20 stand as rejected under 35 U.S.C. 103(a) as being unpatentable over Cox et al. in view of Konietzki.

The patent to Cox et al. discloses an apparatus for dispensing a liquid-gas foam string of encapsulated plastic resin (Column 2, lines 48-53), the string including a chemical composition; and a dispenser for dispensing the string from the can toward a target, the string being dispensed far enough away from the can so that the user does not substantially contaminate an area around the target. The foam string comprises a liquid-gas foam string as recited in claim 4. Cox et al. also discloses that the foam string can be provided with perfumes or other odors, however, Cox et al. do not disclose a *scent for a hunter to lure animals*. The patent to Konietzki teaches a scent propagation device for luring animals for a hunter, the device comprising a scented string 21 for attracting animals. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Cox et al. by providing an animal attracting scent to the foam string of Cox et al. and using the

device to lure animals for hunting as taught by Konietzki. The device of Cox et al. and Konietzki is fully capable of carrying out the methods as recited in claim 2. Regarding claim 16, one of ordinary skill in the art would obviously know to make the foam string sufficiently strong as recited in order to prolong the life of the foam string and save on cost and material.

Claims 7-10 stand as rejected under 35 U.S.C. 103(a) as being unpatentable over Cox et al. in view of Konietzki as applied to claim 1 above, and further in view of Easley.

Cox et al. and Konietzki do not disclose the chemical compositions as recited in claim 7-10. The patent to Easley teaches a dispensing device used by hunters in which the device emits a chemical composition comprising urine of an animal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used in the device of Cox et al. and Konietzki urine of an animal as taught by Easley as an effective attractant.

(11) Response to Argument

First Issue

Appellant argues that the rejection under 35 USC 103(a) fails because the examiner has failed to establish a *prima facie* case of obviousness, as the examiner has improperly combined the cited references. The device of Cox et al. is a can for dispensing a plastic foam string from a distance of six inches or more in which the foam can be incorporated with various perfumes or odors (Column 7, lines 10-13) as recognized by the Applicant. It is known that perfume will mask human scent and even

attract humans or animals depending on the particular scent. The device of Konietzki teaches a scent propagation device for luring animals and/or masking the scent of a human who is hunting game (please see the Abstract) in which the device comprises a string which is coated with various scents for attracting animals. Thus, the devices of Cox et al. and Konietzki have common structural limitations of a string, the string having a particular scent, and the scent being capable of masking human scent and attracting animals. The device of Cox et al. is also capable of dispensing a foam string comprising various colors and Cox et al. states that their device has substantial play and decorative utility it clearly can be used for other purposes, whereas the term "substantial" renders the device of Cox et al. to be used as a play and decorative utility but not limited to just those two functions. Thus, the device of Cox et al. can have other utilities. One having ordinary skill in the hunting devices art would obviously recognize that the device of Cox et al. can be used as a hunting device with a slight modification since the foam string of Cox et al. can be made with various scents and colors. For example, the foam string could be made with a color which blends with the scenery of the hunting area, or even providing a "decorative" effect by simulating leaves hanging on trees. The slight modification as mentioned above would be to provide a animal attracting scent to the foam string and since Konietzki teaches a hunting device comprising a string having various animal attracting scents, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Cox et al. by providing the foam string of Cox et al. with an animal attracting scent in order to attract animals for hunting purposes. Such a

modification would not cause a major redesign to the device of Cox et al. since the scent can be incorporated in the liquid base of Cox et al. Thus, the combination of the Cox et al. and Konietzki patents is proper and the device of Cox et al. and Konietzki is fully capable of carrying the methods as recited in the instant invention. The Easley patent also teaches a device used by hunters in which the device produces various odors to attract animals, and although it was used, it was actually not required in formulating the rejections.

Second Issue

Appellant argues that neither the Cox et al. or the Konietzki patents teach dispensing a foam string at a distance from the target so that an area around the target is not contaminated by the hunter. Since the device of Cox et al. and Konietzki is capable of dispensing the foam string to a distance of 6 inches or more, the hunter would not contaminate an area around the target because the hunter would not be in the immediate area of the target. Also, the Appellant has not adequately defined the distance in which the hunter needs to be away from the target.

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 3752

Respectfully submitted,



Davis Hwu, Primary Examiner
Art Unit 3752

DDH
July 15, 2004

Conferees:

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